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Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

ROBERT WHITE, PRO SE,

Petitioner;

v.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
Special Counsel for the Chapter 7 Trustee for
CK LIQUIDATION CORP,

Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Does 11 U.S.C. §327 tolerate waivers of actual conflicts of interest between estate co-counsel and the Chapter 7 Trustee.

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PETIT ION FOR A WRIT OF CERTIORARI

Petitioner, Robert White – Pro Se (hereafter "White"), an unsecured creditor in this bankruptcy case, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

OPINIONS BELOW

Only the Bankruptcy Appellate Panel for the United States Court of Appeals for the First Circuit (hereafter "BAP") published its opinion in this appeal [1]. The United States Court of Appeals for the First Circuit (hereafter "First Circuit Court of Appeals") declined to publish or issue an opinion and deferred to the BAP's published opinion instead. Likewise, the Bankruptcy Court for the Central District of Massachusetts did not issue an opinion or publish its decision in this appeal.

JURISDICTIONAL STATEMENT

The judgment of the First Circuit Court of Appeals was issued on July 14, 2010, affirming the judgment of the BAP, which was issued on July 6, 2009. The BAP affirmed the Bankruptcy Court's Orders granting Mintz & Levin's final fee award, which was entered on November 12, 2008. On July 26, 2010 White requested reconsideration en banc of the

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1 Petitioner's Appendix, pg. 2, BAP published opinion in this appeal.

July 14, 2010 judgment of the First Circuit Court of Appeals which went unanswered. The jurisdiction of this Court is invoked under 28 U.S.C.§ 1254(l). The First Circuit Court of Appeals had jurisdiction to hear the appeal of the BAP's final judgement in this case pursuant to 28 U.S.C. §158(d)(1). White's Writ is timely because it was filed and served within 90 days after the entry of the judgment appealed.

FEDERAL STATUTES INVOLVED

The following three Title 11 US Code sections are involved in this appeal:

> 11 U. S. C. § 327. Employment of professional persons
>
> > (a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.
> >
> > ...
> >
> > (c) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting

> the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

and,

> 11 U. S. C. § 101. Definitions
>
> In this title the following definitions shall apply:
>
> ...
>
> (14) The term "disinterested person" means a person that—
>
> ...
>
> (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

STATEMENT OF CASE

This is an appeal of the final fee award of special counsel to the chapter 7 estate, Mintz & Levin, who is Respondent [2]. White contends that Mintz & Levin has

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2 Petitioner's Appendix, pg. 18.

an unwaivable and actual conflict of interest which prohibits Mintz & Levin from receiving compensation for serving as special counsel to the chapter 7 estate. Mintz & Levin was retained by the Chapter 7 Trustee to defend the estate and prosecute and settle the Bankruptcy Court's sua sponte Federal Rule of Bankruptcy Procedure 9011 (hereafter "Rule 9011") sanction against the estate's largest creditor, Harold Bowers [3]. Mr. Bowers filed a motion to vacate the expedited non-plan sale (chapter 11 §363 sale) accusing estate counsel (debtor's counsel and creditors committee counsel) of fraud for understating their fees and overstating the amount of dividend available to unsecured creditors in order to obtain Mr. Bowers' consent to the sale [4]. At the preliminary hearing on Mr. Bowers' motion to vacate the Bankruptcy Court simultaneously scheduled an evidentiary hearing for Mr. Bowers' motion, with discovery, and issued an Order to Show Cause why Mr. Bowers should not be sanctioned pursuant to Rule 9011 for raising frivolous allegations [5]. In that Order to Show Cause the Bankruptcy Court ordered its sanction paid from Mr.

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3 Bankruptcy Court Docket (hereafter "BC Docket") #416 – Chapter 7 Trustee's Motion to Employ Mintz & Levin. All Bankruptcy Court Docket entries referenced in this Writ were designated into the record on appeal unless referenced as included in Appellant's BAP Appendix.

4 BC Docket # 371, Harold Bowers Motion to Vacate Due to Fraud on the Court

5 BC Docket # 412, Order to Show Cause Why Harold Bowers Should Not Be Sanctioned.

Bowers' portion of the dividend, which ultimately were paid to Mintz & Levin contrary to Rule 9011 (c)(2)'s instructions that sua sponte sanctions are to be paid to the court [6].

At the retention stage of employment, Mintz & Levin disclosed an actual conflict of interest with the other estate co-counsel, Sherin & Lodgen, who Mr. Bowers accused of fraud. Mintz & Levin's disclosure revealed that Sherin & Lodgen represented Mintz & Levin in at least two civil litigation cases outside bankruptcy which were pending during Mintz & Levin's defense of the estate over Mr. Bowers' fraud allegation against Sherin & Lodgen. Mintz & Levin, Sherin & Lodgen, and the Chapter 7 Trustee issued affidavits acknowledging and attempting to waive those conflicts [7] [8] [9], which the Bankruptcy Court accepted as curing the conflicts [10].

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6 White's appeal below pivoted on this issue of unlawful sua sponte attorney fee sanction issued pursuant to Rule 9011 (c)(1)(B); however, White's Writ of Certiorari focuses solely on Mintz & Levin's conflicts of interest in prosecuting the Bankruptcy Court's unlawful sanctions.

7 BC Docket # 439, Affidavit of Michael Gardner In Support of Retention of Mintz & Levin.

8 BC Docket # 441, Affidavit of Michael Goldberg in Support of Retention of Mintz & Levin.

9 BC Docket # 438, Response of Chapter 7 Trusee to Opposition to Retention of Mintz & Levin.

10 BC Docket #462, Minute Order granting Chapter 7 Trustee's Application to Employ Mintz & Levin.

FACTS AND HISTORY

Three years prior to petitioning for chapter 11 protection the Debtor (CK Liquidation Crop., f.k.a. CADKEY Corp., hereafter "CADKEY") lost a decade long copyright infringement lawsuit to Harold Bowers, and CADKEY suffered a judgment that had grown to $6 mil. with interest as of the petition date[11]. CADKEY filed its chapter 11 petition on August 22, 2003, and sold all its assets through an expedited non-plan sale [12] to one of its largest stockholders [13], Kubotek, a Japanese corporation. At the sale hearing, held on October 27, 2003, Kubotek committed perjury[14], could not secure a good faith finding, and decided to close the sale regardless. White appealed the sale all the way to this Court, case no. 05-8146, cert. denied. Mr. Bowers is the largest creditor to the estate and White is the second largest unsecured creditor with a $1.86 mil. claim [15].

The case converted to chapter 7 on March 4,

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11 Appellant's BAP Appendix, pg. 79, Claim 13 – Claims Register. Appellant's BAP Appendix was entered into the record during the BAP appeal of this case.

12 BC Docket #121 – Sale order.

13 Appellant's BAP Appendix, pg. 86, Question 21(b) - Debtor's Schedules , Stock Disclosure.

14 Appellant's BAP Appendix, pg. 44, ln. 4 – Docket #245: Transcript October 27, 2003 hearing after auction.

15 Appellant's BAP Appendix, pg. 80, Claim 17 – Claims Register.

2004, whereby White filed a motion to vacate the sale alleging that chapter 11 estate counsel committed fraud on the court and creditors [16] by promising a larger dividend than counsel knew was available at the time in order to obtain Mr. Bowers' consent to the sale. The Bankruptcy Court dismissed White's motion without an evidentiary hearing reasoning that White's initial appeal of the sale order was pending in District Court after the sale and that appeal and White's motion to vacate needed to be consolidated for jurisdictional reasons [17]. White then filed a motion to disgorge estate counsels' fees [18] in Bankruptcy Court, which drew sua sponte Rule 9011 attorney fee sanctions which the Bankruptcy Court ordered paid to the estate [19]. The Bankruptcy Court incarcerated White for contempt after he was unable to pay the $3,500 fine [20] as a lump sum and then released White from Federal Prison 42 days later after the Chapter 7 Trustee agreed to take title to White's two vehicles in leu of cash for the sanctions [21]. White appealed those sanctions through the BAP and on to the First Circuit

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16 BC Docket #313 - White's motion to vacate.

17 BC Docket #330 – Order denying White's motion to vacate.

18 BC Docket #348 – White's motion to disgorge.

19 BC Docket #386 – Order sanctioning White.

20 BC Docket #604 & 609 - Incarceration orders.

21 BC Docket # 618 - Incarceration release order.

Court of Appeals which dismissed the appeal as moot[22] because the Bankruptcy Court had purged White's sanctions and contempt while on appeal and ordered estate counsel (Sherin & Lodgen) and the Chapter 7 Trustee to pay White's sanctions instead [23].

Soon after White filed his motion to vacate Mr. Bowers filed nearly identical allegations of fraud against estate counsel in his own motion to vacate the sale [24]. The Bankruptcy Court scheduled an evidentiary hearing, allowed discovery, issued an order to show cause why Mr. Bowers should not be sanctioned pursuant to Rule 9011 [25], appointed Mintz & Levin as special counsel for the chapter 7 estate to replace Sherin & Lodgen (who was accused of fraud by Mr. Bowers), conducted a two day evidentiary hearing combining the Bankruptcy Court's sua sponte sanctions with Mr. Bowers' fraud allegations [26], and afterward sanctioned Mr. Bowers pursuant to Rule

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22 Appellant's BAP Appendix, pg. 34 - 1st Circuit 6/29/07 dismissal of White's sanction appeal.

23 Appellant's BAP Appendix, pg. 29 - Docket #705: Bankruptcy court order purging White of sanctions.

24 BC Docket #371 - Bowers' motion to vacate.

25 BC Docket #412 - Bankruptcy Court's Order to Show Cause pursuant to Rule 9011(c)(1)(B).

26 BC Docket #610, pg. 4, lns. 8-15, Bowers trial transcript, 1st day.

9011 [27]. The Bankruptcy Court continued the sanction hearing several times during the next six months after trial to determine the "amount ... [and] modality" of Mr. Bowers' sanctions [28]. Thereafter, in a stipulated agreement, the two chapter 11 estate counsel who Mr. Bowers accused of fraud took money judgments against Mr. Bowers for their attorney fees in the combined amount of $363,000 in accordance with the Court's purported authority to issue sua sponte attorney fee sanctions [29] and without either counsel moving for sanctions of their own pursuant to Rule 9011. Mintz & Levin in turn formulated a fee shifting scheme through the sanction settlement agreement to take its attorney fees out of Mr. Bowers' estimated portion of dividend before any of the remaining claims had been settled or disburse [30]. Mintz & Levin submitted an interim fee application in December of 2005, several months before the 2006 settlement agreement with Mr. Bowers was negotiated. Mintz & Levin was awarded $140K of their $270K requested for fees and costs up to and including Mr. Bowers' two day evidentiary hearing, and for litigating the Bankruptcy

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27 BC Docket #608, pg. 177, ln. 6 - pg. 179, ln. 19, Bowers trial transcript, 2nd day.

28 BC Docket #608, pg. 179, ln. 9.

29 BC Docket #767, pg. 8, pp. 22 - Bowers sanction settlement agreement.

30 BC Docket #767, exhibit A attached thereto, pp. 2, fee shifting formula.

Court's sua sponte sanctions afterward [31]. Subsequently, Mintz & Levin submitted $39K in additional fees and costs in their final fee application for negotiating a settlement with Mr. Bowers over the Bankruptcy Court's sua sponte Rule 9011 sanctions [32].

At Mintz &Levin's final fee hearing the Bankruptcy Court said it initially denied half of Mintz & Levin's interim fee application due to Mintz & Levin's "over staffing" [33] and the Court said it intended that denial to be permanent [34]. However, the Bankruptcy Court went on to award Mintz & Levin $39K more in fees billed during the second interim period for negotiating a settlement with Mr. Bowers over the Court's sanctions [35]. White objected to Mintz & Levin's $314,000 in final fees [36] whereby the Bankruptcy Court awarded $180K of the $314K

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31 Appellant's BAP Appendix, pg. 27 – Docket #684 - Order allowing in part Mintz & Levin's 1st interim fee application.

32 BC Docket #850 - Mintz & Levin final fee application.

33 Appellant's BAP Appendix, pg. 24, ln. 7 – Docket #891: Transcript Mintz & Levin final fee hearing.

34 Appellant's BAP Appendix, pg. 12, ln. 12 – Docket #891: Transcript Mintz & Levin final fee hearing.

35 Appellant's BAP Appendix, pg. 12, ln. 15 - 17 – Docket #891: Transcript Mintz & Levin final fee hearing.

36 BC Docket #851, 853, & 873 – White's objection to Mintz & Levin final fee application with two amendments.

requested [37] .

ARGUMENT

Summary

In order to evaluate Mintz & Levin's conflict of interest the basis of their fees must be examined. Mintz & Levin was hired to defend the estate and to prosecute and settle the Bankruptcy Court's sua sponte Rule 9011 sanctions. Mintz & Levin applied for fees pursuant to 11 U.S.C. §330, however Mr. Bowers was paid to settle the Bankruptcy Court's sua sponte sanctions pursuant to Rule 9011. Neither the Chapter 7 Trustee nor Mintz & Levin petitioned the Court for relief of their own pursuant to Rule 9011.

Most Federal Circuit Courts in the United States recognize that sua sponte Rule 9011 sanctions must be paid to the Court, not to counsel. See *In re DeVille*, 361 F.3d 539 (9th Cir. 2003), explaining:

> Under Rule 9011, a court may award "an appropriate sanction" on its own motion, if it first issues an order to show cause describing the specific misconduct. Fed. R. Bankr. P. 9011(c)(1)(B). Rule 9011(c) sets forth the available sanctions, and limits any monetary sanction that is imposed pursuant to a sua sponte order to a penalty payable to the court. Shubov, 253 B.R. at 546; Fed. R. Civ. P. 11, Advisory Committee Notes to 1993 Amendments. Therefore, the Bankruptcy Court did not have authority to

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37 BC Docket #876 - Order allowing in part Mintz & Levin's final fees.

> award attorneys' fees to Cardinale as a sua sponte sanction under Rule 9011.

Similarily, in ***YOUNG v. U.S. EX REL. VUITTON ET FILS S. A.*, 481 U.S. 787, at 788,** this Court recognized one party to civil litigation can not be paid to prosecute another party over the court's sanctions:

> District courts have authority to appoint private attorneys to prosecute criminal contempt actions....
> Counsel for a party that is the beneficiary of a court order may not be appointed to undertake criminal contempt prosecutions for alleged violations of that order. A private attorney appointed to prosecute a criminal contempt should be as disinterested as a public prosecutor, since the attorney is appointed solely to pursue the public interest in vindication of the court's authority. In a case where a prosecutor also represents an interested party, however, the legal profession's ethical rules may require that the prosecutor take into account an interest other than the Government's. This creates an intolerable danger that the public interest will be compromised and produces at least the appearance of impropriety. The fact that the judge makes the initial decision to proceed with a contempt prosecution is not sufficient to quell concern that the interested prosecutor may be influenced by improper motives, since the prosecutor

> exercises considerable discretion in matters that are critical to the case but outside the court's supervision. The requirement of a disinterested prosecutor is consistent with this Court's earlier decisions recognizing that prosecutors need not be as disinterested as judges.

Therein lies the reason why Mintz & Levin's final fee award must be reversed. The Bankruptcy Court appointed conflicted counsel to prosecute and settle its sua sponte Rule 9011 sanctions and then awarded attorney fees as sanctions paid from estate funds instead of ordering the frivolous filer to pay the court; thus depleting the dividend for other unsecured creditors.

Mintz & Levin contends it was paid to defend the estate against Mr. Bowers' effort to vacate the §363 sale. White contends Mintz & Levin was paid for litigating and settling the Bankruptcy Court's sua sponte Rule 9011 sanctions. However, neither explanation justifies fees because Mintz & Levin was clearly conflicted, can not waive its conflicts, and is not entitled to fees for any reason.

Mintz & Levin Admitted to Its Conflicts of Interest

Mintz & Levin admits to its actual conflicts of interest in its retention affidavit:

> 1. I am a member of the firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. ("Mintz Levin" or the "Firm") ...

2. As disclosed in the Mikels Affidavit dated January 12, 2005, Mintz Levin is represented by Sherin and Lodgen LLP ("Sherin and Lodgen") in matters unrelated to this bankruptcy...

...

4. The Sherin and Lodgen Representation consists of two lawsuits brought by former clients against the Firm, one of which is still pending and the other of which is in the process of being dismissed. ...

5. Sherin and Lodgen also represents a member of Mintz Levin, in his individual capacity, in a lawsuit relating to work performed at a prior firm. Mintz Levin is not a party to this lawsuit. ...

(See, BC Docket # 439, Affidavit of Michael Gardner In Support of Retention of Mintz & Levin.)

Sherin and Lodgen further admits to its actual conflicts of interest and attempts to waive them:

1. I am a partner of the firm of Serin and Lodgen LLP....

2. As disclosed in the Mikels Affidavit dated January 12, 2005, Mintz Levin is represented by Sherin and Lodgen in matters unrelated to this bankruptcy.

3. I understand that as the client in the attorney-client relationship described in the foregoing paragraph, Mintz Levin is under no profession obligation to refrain from

> pursuing legal actions of any kind against Sherin and Lodgen on behalf of its clients, including the Chapter 7 Trustee in the above-captioned case.
> 4. I understand that, should Mintz Levin determine that is in the best interest of the estate to pursue any claims against Sherin and Lodgen, including any claims of fraud on the court, Sherin and Lodgen's existing representation of Mintz Levin would not prohibit investigation into, or the bringing of such claims. Sherin and Lodgen hereby consents to the representation of the Trustee by Mintz Levin in such action.
> (See BC Docket # 441, Affidavit of Michael Goldberg in Support of Retention of Mintz & Levin.)

The Chapter 7 Trustee acknowledged estate co-counsels' actual conflicts of interest and also attempts to waive their conflicted representation:

> John A. Burdick, Jr, the duly-appointed Chapter 7 Trustee of the debtor CK Liquidation Corporation (f/k/a CADKEY Corporation) (the "Trustee") hereby files this response ...
> ...
> 2. The Trustee submits that the disclosures made in the Mikels Affidavit meet the disclosure requirements contained in the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules ...

Nevertheless, the Gardener Affidavit, filed contemporaneously herewith, contains additional disclosures on the issues requested by Bowers in the Bowers Objection. Further, the Goldberg Affidavit, filed contemporaneously herewith, evidences that Mintz Levin will not be restrained from taking any actions against Sherin and Lodgen LLP ("Sherin and Lodgen") in the event such action are appropriate and within the scope of Mintz Levin's employment as authorized by the Court.

...

7. Based on the present state of the record, the Trustee does not believe that an action alleging a fraud perpetrated on the Court has merit. ...

8. If the facts and circumstances change so that the Trustee believes it is in the best interest of the estate to pursue a claim, or claims, against Sherin and Lodgen, the Affidavit of Michael Goldberg, filed contemporaneously herewith, makes clear that Mintz Levin is available to pursue any such remedy.

(See BC Docket # 438, Response of Chapter 7 Trusee to Opposition to Retention of Mintz & Levin. [38])

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38 BC Docket #422, Opposition to Retention of Richard Mikels. Mr. Bowers filed formal opposition to Mintz & Levin's retention as estate counsel due to their disclosed conflicts,

This kind of conflicted cross-representation is clearly prohibited under 11 U. S. C. § 327 and by the American Bar Association's Model Rules of Professional Conduct, Rule 1.7:

> Model Rules of Professional Conduct
>
> *Client-Lawyer Relationship*
> Rule 1.7 Conflict Of Interest: Current Clients
>
> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest.
>
> ...
>
> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
>
> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (2) the representation is not prohibited by law;
>
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or

other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Observing that Rule 1.7 (b) is conjunctive, each requirement in (1) - (4) must be met in order for the Rule to vindicate the representation whereas the party's waivers of Mintz & Levin's conflicts violates each of the requirements.

Mintz & Levin's Representation of the Estate Violated Mode Rule 1.7(b)(1)

According to *Hilti, Inc. v. HML Development Corp.*, 2007 WL 809792, at 26 (Mass.Super. 2007) an attorney can not serve two masters:

> [L]oyalty to a client is considered to be impaired when the lawyer 'cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests'.

Mintz & Levin could not possibly be expected to prosecute its own attorney while being represented by that counsel outside the current case; therefore, Mintz & Levin could not give diligent representation to the estate.

Mintz & Levin's Representation of the Estate Violated Mode Rule 1.7(b)(2)

The precedential case most often cited for establishing the definition of conflicts of interest in bankruptcy is *In re Roberts*, 46 B.R. 815, 826-27 (Bankr. D. Utah 1987) :

> "to hold an interest adverse to the estate" means:
>
> ...
>
> (2) to possess a predisposition under circumstances that render such a bias against the estate.

It is unreasonable to suggest Mintz & Levin did not hold a bias in favor of its counsel accused of fraud and thus against the estate.

Mintz & Levin's Representation of the Estate Violated Mode Rule 1.7(b)(3)

The Chapter 7 Trustee asserted Sherin & Lodgen could waive prosecution by Mintz & Levin inside bankruptcy while Sherin & Lodgen represented Mintz & Levin in civil litigation outside bankruptcy. This is exactly the kind of conflicted cross-representation Model Rule 1.7 (b)(3) intends to prohibit.

Mintz & Levin's Representation of the Estate Violated Mode Rule 1.7(b)(4)

According to *John Pearson v. First Nh Mortgage Corporation*, 200 F3d 30, at pp. 54 (1st Cir. 1999) estate counsel must abide by the Model Rules of Professional Conduct and are not free to authorize their own conflicted representation:

> First, under the governing ethical rules, some conflicts of interest are considered so fundamental that even an anxious prospective client is deemed incapacitated from providing informed consent. See, e.g., NHRPC 1.9; Kevlik, 724 F.2d at 850-51. "'[W]hen a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent.'" Kelley's Case, 627 A.2d 597, 600 (N.H. 1993) (quoting Comments, ABA Model Rule 1.7(b)) (emphasis added).

Sherin & Lodgen is incapable of giving informed consent releasing Mintz & Levin to prosecute Sherin & Lodgen inside bankruptcy. Likewise, the parties fail to realize Mintz & Levin is required to and also unable to give informed consent releasing Sherin & Lodgen from "diligent representation" outside bankruptcy. Waivers are prohibited more by the Rules and circumstances in this case than by the

parties.

SUMMARY

Actual conflicts of interest are not to be tolerated in bankruptcy according to *Woods v. City Nat. Bank & Trust Co.of Chicago*, 312 U.S. 262, at 268. :

> Where an actual conflict of interest exists, no more need be shown in this type of case to support a denial of compensation.

Courts are remiss in tolerating actual conflicts of interest by a trustee, see *Diane Denmark v Liberty Life Assurance Company of Boston* (*Denmark* II)(1st Cir. May 2009):

> courts are duty-bound to inquire into what steps a [trustee] has taken to insulate the decision making process against the potentially pernicious effects of structural conflicts.

Prevailing ethical principles not only justify, but require, disqualification of Mintz & Levin's fees. See *In re Bushkin Associates, Inc.*, 864 F.2d 241, 246 (1st Cir. 1989) (disqualification is an entirely necessary measure to ensure the "integrity of the judicial process, enforce [the court's] rules against transgressors, and maintain public confidence in the legal profession.")

WHITE'S WRIT SHOULD BE GRANTED

In this case the First Circuit Court of Appeals declined to publish and instead allowed a published opinion by its BAP to endorse issuance of conflict waivers between estate co-counsel to cure actual conflicts of interest clearly prohibited by Model Rules of Professional Conduct and 11 U. S. C. § 327. This Court should exercise its supervisory authority over the US Circuit Courts of Appeals and correct this unlawful practice of estate counsel attempting to waive their actual conflicts of interest in bankruptcy court.

Respectfully submitted on October 8, 2010, by

Robert L White

Robert White - pro se